IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3431 OF 2006

Bajirao Baburao Kalbhor ...Petitioner

V/s.

M/s.Samsher Brothers Pvt. Ltd & ors. ...Respondents

Shri.N.V. Vechalekar for Petitioner.
Shri.Sanjay Kshirsagar for Respondent No.1.

CORAM : V.M. KANADE, J.
DATED : 7th MARCH, 2007.

P.C. :-

1. The Petitioner is challenging the order passed by the Executing Court below Ex.282 in Special Darkhast No.143/1993. Suit for special performance of contract was filed by the Respondents which was decreed on 20/12/1989. Against this decree, an appeal was preferred by the Petitioner. However, this appeal was withdrawn by the Petitioner. Thereafter on 13/11/1995, the Petitioner filed Special Suit No.377/1994 for declaration that decree passed in Special Civil Suit No.680/1977 be declared null and void. This suit was subsequently withdrawn. The Petitioner also filed no objection to the executing proceeding on 10/11/1995 in pursis below Ex.33. Thereafter on 13/07/1998 once against no objection pursis was filed

by the Petitioner below Ex.76. On 15/02/1998 judgment debtor No.4 who is claiming his rights through Judgment Debtor No.2 i.e. present Petitioner had filed his objection below Ex.20. This objection was also rejected. Thereafter on 16/11/1998 Court Commissioner was appointed. Sale deed in respect of shares of present Petitioner and Judgment Debtor No.3 were executed and Darkhast was kept pending only with respect of undertaking of the Petitioner filed below Ex.35 in Special Civil Suit No.680/1977. On 02/11/1999 almost after lapse of 10 years the Petitioner had once against filed application below Ex.101 under Section 47 of C.P.C. This application was withdrawn by him on 31/03/2006. Thereafter on 03/04/2006 another application below Ex.282 was filed under Section 47 of C.P.C. by the Petitioner. One of the contentions raised in this applications is that power of attorney can not file this Darkhast Proceeding and therefore, Darkhast be quashed. It was contended in the said application that decree holder-company had not submitted any resolution or documentary evidence to show that the decree holder company was in existence when the suit was filed. It was further contended that there was no evidence that plaintiff- company had appointed Mr. Minbahadur Shurbir Managing Director and other objections which he

raised in earlier objections were again raised in the present application. The Petitioner also had filed his objection at Ex.298 in application under order 21 rule 90 stating sale deed was also executed. This application has been subsequently rejected by the court.

3. I have heard the learned counsel for the Petitioner at length. He has invited my attention to the order passed by the Executing Court at Ex.L. He submitted that Judgment Debtor No.4 had preferred an appeal in the District Court against the order passed by the Executing Court and that the said appeal had already been admitted and Executing Court directed the Trial Court to decide the objections raised by the Judgment Debtor No.4. He submitted that he may be allowed to amend the petition in order to incorporate order passed by the Trial Court.

4. Learned counsel appearing on behalf of Respondents has invited my attention to the various applications which the present Petitioner had filed earlier after suit was decreed and which was later on withdrawn by him. He submitted that same objections which are raised in the present application at Ex.282 were earlier raised and

withdrawn. He submitted that therefore, the Petitioner may be estopped from raising these contentions over and over again. He submitted that obviously this was an attempt to delay execution of decree which was passed in favour of the Respondent-company.

5. It is not possible to accept the submissions led by the learned counsel for the Petitioner. After having perused the impugned order, in my view, there is no reason to interfere with the said order while exercising the writ jurisdiction under Article 227 of the Constitution of India. The Petitioner having filed various applications and after having withdrawn them, it is not open for the Petitioner to raise these contentions over and over again. Executing Court was justified in rejecting the said application.

. Writ petition is, accordingly, dismissed.

V.M. KANADE, J.